

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 847

THE UNITED STATES OF AMERICA, PLAINTIFF
IN ERROR

vs.

THE BALTIMORE POST

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MARYLAND

I

INDEX.

	Original	Print
Record from D. C. U. S., District of Maryland.....	1	1
Caption (omitted in printing).....	1	1
Bill of indictment.....	2	1
Demurrer.....	9	5
Supplemental demurrer.....	10	5
Opinion, Soper J.....	10	6
Order sustaining demurrer.....	22	13
Judge's certificate.....	23	13
Petition for and order allowing writ of error.....	24	14
Assignment of errors.....	26	14
Writ of error.....	26	16
Stipulation re transcript of record.....	31	17
Return to writ of error.....	33	18
Clerk's certificate.....	34	18

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In United States District Court

UNITED STATES OF AMERICA

VS.

THE BALTIMORE POST COMPANY, a corporation organized under the laws of the State of Maryland.

No. 6929 Criminal Docket.

Bill of indictment filed November 20, 1924

In the District Court of the United States of America for the District of Maryland. Of the September term, in the year 1924

First count

DISTRICT OF MARYLAND, ss.:

The grand jurors for the United States of America empaneled and sworn in the District Court of the United States for the District of Maryland at the September term of said court in the year 1924, and inquiring for said District of Maryland, upon their oath present, that, on March 15, 1924, the income return of one J. Cookman Boyd was made to Galen L. Tait, then the collector of internal revenue of the United States at Baltimore, to wit, in said District of Maryland and in the internal revenue collection district of Maryland, showing, among other things, the amount of the income tax of said J. Cookman Boyd accruing to the United States for the taxable year 1923 to be \$150.65; that said income return of said J. Cookman Boyd thereupon became a public record, in the office of said collector, at Baltimore aforesaid, upon which the income tax of said J. Cookman Boyd in said sum of \$150.65 for said taxable year was determined by the Commissioner of Internal Revenue of the United States and paid to said collector by said J. Cookman Boyd; that afterwards, to wit, on October 24, 1924, a list of income taxpayers in said collection district, containing the name of said J. Cookman Boyd and showing the amount of said income tax so paid by him to said collector, was prepared and made available to inspection in said office of said collector at Baltimore aforesaid in the manner determined by said Commissioner of Internal Revenue, not, however, to be printed or published in newspapers or public prints; and that the Baltimore Post Company, a corporation organized under the laws of the State of Maryland, then publisher of a newspaper and public print called The Baltimore Daily Post, then circulating extensively in said District of Maryland, on said October 24, 1924, at Baltimore aforesaid, in said District of Maryland, having by its agent examined said list of taxpayers in said office of said collector, unlawfully and in a manner not provided by law did print and publish, in the issue of said newspaper and public print of that date, a part of said income return, then well knowing it to be

such, to wit, the part thereof showing the name of said J. Cookman Boyd and the amount of his said income tax, to wit, in the words and figures following: 1923 taxes paid in this district. Records of the local income tax office, thrown open to public inspection to-day, show the following amounts paid in the Maryland district: J. Cookman Boyd, \$150.65; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Second count

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, on March 15, 1924, the income return of one Leon C. Coblens was made to said Galen L. Tait, then collector of internal revenue of the United States at Baltimore, to wit, in said District of Maryland and in said internal revenue collection district of Maryland, showing, among other things, the amount of the income tax of said Leon C. Coblens accruing to the United States for the taxable year 1923 to be \$136.97; that said income return of said Leon C. Coblens thereupon became a public record, in the office of said collector, at Baltimore aforesaid, upon which the income tax of said Leon C. Coblens in said sum of \$136.97 for said taxable year

4 was determined by said Commissioner of Internal Revenue of the United States and paid to said collector by said Leon C. Coblens; that afterwards, to wit, on October 24, 1924, a list of income tax payers in said collection district, containing the name of said Leon C. Coblens and showing the amount of said income tax so paid by him to said collector, was prepared and made available to inspection in said office of said collector at Baltimore aforesaid in the manner determined by said Commissioner of Internal Revenue, not, however, to be printed or published in newspapers or public prints; and that the Baltimore Post Company, a corporation under the laws of the State of Maryland, then publisher of a newspaper and public print called the Baltimore Daily Post, then circulating extensively in said District of Maryland, on said October 24, 1924, at Baltimore aforesaid, having by its agent examined said list of tax payers in said office of said collector, unlawfully and in a manner not provided by law did print and publish, in the issue of said newspaper and public print of that date, a part of said income return in this count of this indictment mentioned, then well knowing it to be such, to wit, the part thereof showing the name of said Leon C. Coblens and the amount of his said income tax, to wit, in the words and figures following: 1923 taxes paid in this district. Records of the local income tax office, thrown open to public inspection to-day, show the following amounts paid in the Maryland district: Leon C. Coblens, \$136.97; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Third count

5 And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, on March 15, 1924, the income return of one Frank A. Furst was made to said Galen L. Tait, then collector of internal revenue of the United States at Baltimore, to wit, in said District of Maryland and in said internal revenue collection district of Maryland, showing, among other things, the amount of the income tax of said Frank A. Furst accruing to the United States for the taxable year 1923 to be \$31.45; that said income return of said Frank A. Furst thereupon became a public record, in the office of said collector, at Baltimore aforesaid, upon which the income tax of said Frank A. Furst in said sum of \$31.45 for said taxable year was determined by said Commissioner of Internal Revenue of the United States and paid to said collector by said Frank A. Furst; that afterwards, to wit, on October 24, 1924, a list of income tax payers in said collection district, containing the name of said Frank A. Furst and showing the amount of said income tax so paid by him to said collector, was prepared and made available to inspection in said office of said collector at Baltimore aforesaid in the manner determined by said Commissioner of Internal Revenue, not, however, to be printed or published in newspapers or public prints; and that the Baltimore Post Company, a corporation under the laws of the State of Maryland, then publisher of a newspaper and public print called The Baltimore Daily Post, then circulating extensively in said District of Maryland, on said October 24, 1924, at Baltimore aforesaid, having by its agent examined said list of taxpayers in said office of said collector, unlawfully and in a manner not provided
6 by law did print and publish, in the issue of said newspaper and public print of that date, a part of said income return in this count of this indictment mentioned, then well knowing it to be such, to wit, the part thereof showing the name of said Frank A. Furst and the amount of his said income tax, to wit, in the words and figures following: 1923 taxes paid in this district. Records of the local income tax office, thrown open to public inspection to-day, show the following amounts paid in the Maryland district: Frank A. Furst, \$31.45; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Fourth count

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on March 15, 1924, the income return of one Daniel Willard was made to said Galen L. Tait, then collector of internal revenue of the United States at Baltimore to wit, in said District of Maryland and in said internal revenue collection district of Maryland, showing, among other things, the amount of the income tax of said Daniel Willard accruing to the United

States for the taxable year 1923 to be \$20,434.01; that said income return of said Daniel Willard thereupon became a public record, in the office of said collector, at Baltimore aforesaid, upon which the income tax of said Daniel Willard in said sum of \$20,434.01 for said taxable year was determined by said Commissioner of Internal Revenue of the United States and paid to said collector by said Daniel Willard; that afterwards, to wit, on October 24, 1924, a list of income tax payers in said collection district, containing the name of said Daniel Willard and showing the amount of said income tax so paid by him to said Collector, was
7 prepared and made available to inspection in said office of said collector at Baltimore aforesaid in the manner determined by said Commissioner of Internal Revenue, not, however, to be printed or published in newspapers or public prints; and that the Baltimore Post Company, a corporation under the laws of the State of Maryland, then publisher of a newspaper and public print called The Baltimore Daily Post, then circulating extensively in said District of Maryland, on said October 24, 1924, at Baltimore aforesaid, having by its agent examined said list of tax payers in said office of said collector, unlawfully and in a manner not provided by law did print and publish, in the issue of said newspaper and public print of that date, a part of said income return in this count of this indictment mentioned, then well knowing it to be such, to wit, the part thereof showing the name of said Daniel Willard and the amount of his said income tax, to wit, in the words and figures following: 1923 taxes paid in this district. Records of the local income tax office, thrown open to public inspection to-day, show the following amounts paid in the Maryland district: Daniel Willard, \$20,434.01; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Fifth count

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, on March 15, 1924, the income return of one Waldo Newcomer was made to said Galen L. Tait, then collector of internal revenue of the United States at Baltimore, to wit, in said District of Maryland and in said internal revenue collection district of Maryland, showing, among other things, the amount of the income tax of said Waldo Newcomer accruing to the United States for the taxable year 1923 to be \$108,723.64; that said income return of said Waldo

Newcomer thereupon became a public record in the office of
8 said collector at Baltimore aforesaid, upon which the income tax of said Waldo Newcomer in said sum of \$108,723.64 for said taxable year was determined by said Commissioner of Internal Revenue of the United States and paid to said collector by said Waldo Newcomer; that afterwards, to wit, on October 24, 1924, a list of income-tax payers in said collection district, containing the name of said Waldo Newcomer and showing the amount of said

income tax so paid by him to said collector, was prepared and made available to inspection in said office of said collector at Baltimore aforesaid in the manner determined by said Commissioner of Internal Revenue, not, however, to be printed or published in newspapers or public prints; and that the Baltimore Post Company, a corporation under the laws of the State of Maryland, then publisher of a newspaper and public print called The Baltimore Daily Post, then circulating extensively in said District of Maryland, on said October 24, 1924, at Baltimore aforesaid, having by its agent examined said list of tax payers in said office of said collector, unlawfully and in a manner not provided by law did print and publish, in the issue of said newspaper and public print of that date, a part of said income return in this count of this indictment mentioned, then well knowing it to be such, to wit, the part thereof showing the name of said Waldo Newcomer and the amount of his said income tax, to wit, in the words and figures following: 1923 taxes paid in this district. Records of the local income tax office, thrown open to public inspection to-day, show the following amounts paid in the Maryland district: Waldo Newcomer, \$108,723.64; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

A. W. W. WOODCOCK,
United States Attorney.

The foregoing indictment is thus endorsed:

"Nov. 20/24. A true bill, Harry L. Black, foreman."

9

In United States District Court

[Title omitted.]

Demurrer to indictment filed 26 November, 1924

The defendant, by Haman, Cook, Chesnut & Markell, its attorneys, demurs to the indictment herein, and to each and every count thereof, saying that the same is bad in substance and insufficient in law.

For that the acts therein alleged and complained of are lawful and are not contrary to the form of any statute of the United States.

HAMAN, COOK, CHESNUT & MARKELL,
Attorneys for Defendant.

10

In United States District Court

[Title omitted.]

Supplemental demurrer to indictment filed 10th December, 1924

And now comes the defendant by its counsel, Newton D. Baker, jr., and W. Calvin Chesnut, and says that the whole of the said indictment and each count thereof is bad in substance and insufficient in law, and said defendant therefore demurs thereto; and for

further cause of demurrer specifies the following grounds, among others, on which said demurrer is based.

(a) The whole of said indictment purports to be based upon subsection 3167 of section 1018 of the revenue act of Congress of June 2, 1924, but said indictment does not show the commission of an offense under said act in that it appears from said indictment that the matter printed or published by the defendant did not constitute any part of any income return.

(b) Said subsection 3167 must be read in connection with section 257-A, and particularly section B of said act of Congress, from which it appears that the subject matter printed or published by the defendant was the matter, and only the matter, made available for public inspection by the Commissioner of Internal Revenue as required by said subsection B of section 257. Therefore, the defendant committed no offense under section 3167 in publishing said matter.

11 (c) If it should be determined that the matter printed or published by the defendant was otherwise a part of an income return, then the legal effect of paragraph B of section 257 is to except the printing or publishing of the matter referred to in subsection B from the operative effect of the provisions of section 3167.

(d) If the construction and application of section 3167 would otherwise cover the matter printed or published by the defendant, then such construction of section 3167 would contravene and must, therefore, yield to and be overcome by the provisions of the first amendment to the Constitution of the United States, which provides that Congress shall make no law abridging the freedom of speech or of the press.

NEWTON D. BAKER,
W. CALVIN CHESNUT,
Attorneys for Defendant.

12

In United States District Court

[Title omitted.]

Opinion filed 16th December, 1924

SOPER, District Judge:

The Baltimore Post Company is indicted for violation of Revised Statutes, section 3167, as reenacted by section 1018 of the revenue act of June 2, 1924 (43 Stat. 253 and 254).

The indictment is in five similar counts. The first count charges that on March 15, 1924, the income return of one J. Cookman Boyd was made to the collector of internal revenue at Baltimore, showing, among other things, the amount of the tax due to the United States for the year 1923 to be \$150.65; that the Commissioner of Internal Revenue determined that said sum was the amount of the tax, and

that it was paid to the collector by the said Boyd; that afterwards, on October 24, 1924, a list of income taxpayers in the collection district of Maryland, containing the name of the said Boyd and showing the amount of the income tax paid by him was prepared and made available to inspection in the collector's office at Baltimore in the manner determined by the commissioner, and that the defendant, on October 24, 1924, at Baltimore, unlawfully and in a manner not provided by law, did print and publish in its newspaper a part of the income return, to wit: the part showing the name of the said Boyd and the amount of his income tax.

The defendant demurs to the indictment on three grounds:

(1) That the matter published by the defendant was no part of the income return, but merely a copy of the list prepared and made available to public inspection by the commissioner.

(2) That it is the duty of the commissioner under the provisions of section 257 (b) of the revenue act of 1924, to prepare and make
13 available for public inspection in each collection district, list containing the name of each person making an income tax return and the amount of tax paid by him, and therefore the publication made by the defendant was not a printing or publishing of a part of an income return in a manner not provided by law in violation of R. S. section 3167.

(3) That if R. S. section 3167, interpreted in connection with section 257, forbids the printing in a newspaper of the name of the taxpayer and the amount of tax paid, contained in the lists open to public inspection, then to that extent section 3167 is unconstitutional, since it abridges the freedom of the press protected by the first amendment to the Constitution of the United States.

Since I have reached the conclusion that Congress did not intend to penalize the publication of the commissioner's list by the press, the discussion will be limited to the second ground of the demurrer.

Section 3167 makes it an offense to print or publish returns only when the act is done "in any manner whatever not provided by law," and it is therefore necessary to inquire in what manner the printing or publishing of returns may lawfully be made. In this respect section 257 becomes pertinent. It provides that returns upon which the tax has been determined by the commissioner shall constitute public records open to inspection only upon order of the President, and under rules and regulations prescribed by the Secretary of the Treasury and approved by the President.

There are, however, a number of exceptions or provisos by which the returns are made available for inspection to certain persons irrespective of the order of the President and the rules and regulations of the Secretary:

(1) Certain congressional committees have the right to call for and inspect the returns, and relevant or useful information thus obtained may be submitted by the committees to their respective Houses.

(2) State officers, upon the request of the governor, are entitled to access to corporation returns at such times and in such manner as the Secretary may prescribe.

(3) Bona fide shareholders, owning 1 per cent or more of the outstanding stock of any corporation may examine the returns of the corporation.

14 (4) Finally, and most important for the purposes of this case is subsection B of section 257, which is enacted in its present form for the first time in the revenue act of 1924. It is as follows:

"The commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal revenue district and in such other places as he may determine, lists containing the name and post-office address of each person making an income tax return in such district, together with the amount of the income tax paid by such person."

Obviously, none of the transactions authorized or directed by section 257 constitutes a violation of section 3167. They are expressly legalized by the terms of the act. The significance of these exceptions from the prohibition against publicity becomes the more apparent when the history of Federal income tax legislation, and particularly of the two sections under discussion is considered. (See the opinion of Justice Hoehling of the Supreme Court of the District of Columbia in the case of Hubbard vs. Blair, filed December 3, 1924.)

Section 3167 was first enacted in its present form by the income tax act of 1894, held unconstitutional in the case of Pollock vs. Farmers' Loan & Trust Co., 158 U. S. 601. Then followed the income tax law of 1913, wherein section 3167 was again reenacted, and the same section has been repeated in the successive revenue acts of 1916, 1919, 1921, and finally in the revenue act of 1924.

The policy of Congress until 1919 was to keep secret the returns, if we may except a brief period under the first income tax law of 1861, and a like period during which, under the corporation tax law of August 5, 1909 (36 Stat. 11), it was provided that corporation returns should constitute public records and be open to public inspection as such. This latter provision was withdrawn by the act of June 17, 1910. With these exceptions, the prohibition against publicity of returns has been absolute.

By the act of 1919, a change of policy was introduced. Section 257 was enacted in its present form, except in two particulars.
15 There was no provision for inspection of returns by congressional committees, and the lists to be prepared and made available by the commissioner for public inspection in the office of the collector in each district, and in such other places as he might determine, contained only the names and addresses of persons making income tax returns, but not the amounts of taxes paid. This section continued, without modification, in the act of 1921, and

finally by the act of 1924 was enlarged so as to provide for the obtaining of information by committees of Congress, and by providing that the lists prepared and posted should contain not only the name of the taxpayer, but the amount of the tax paid by each person.

It therefore appears that while section 3167 has remained the same since the income tax law of 1894 until the present time, it has never forbidden the lawful divulging of information or publication of returns, and that in the meantime, beginning with the act of 1919 and ending with the act of 1924, the kinds of lawful publication have been amended and enlarged, reaching their greatest breadth in the act upon which the indictment is based.

The precise question, then, to be decided is whether the direction in section 257 (b) for the commissioner to make available for public inspection the names of the taxpayers and the amount of the taxes paid is broad enough to permit the printing and publishing by the press of the information so disclosed. The two phrases of the law, to be considered in connection with each other, in their exact verbiage, are as follows:

Section 257 (b):

"The commissioner * * * shall cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal-revenue district and in such other places as he may determine, lists containing the name and the post-office address of each person making an income-tax return in such district, together with the amount of the income tax paid by such person."

and R. S., section 3167, which in this respect provides:

"It shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof."

16 A comparison of these sections (set out in full at the end of the opinion) at once suggests an inconsistency in their terms, or, if they be narrowly construed and distinguished, a confusion of underlying purpose or intention, and the query arises as to the reason for a positive mandate in one part of the act to throw open to every one significant parts of the returns, coupled with an explicit prohibition in another section forbidding the use of the most familiar and efficient means of publicity. The rules of statutory construction are of little assistance. While it is well settled that in the construction of a statute effect should be given to every word, no part should perish by construction, but the several parts should be reconciled and full effect given to each (*Washington Market Company vs. Hoffman*, 101 U. S. 115; *U. S. vs. Showell*, 133 U. S. 1; *Merritt vs. Welsh*, 104 U. S. 694), yet, on the other hand, there is equal authority for the proposition that the intention of the lawmaking body should prevail even against the letter of the statute, and if a literal interpretation of every part of a statute operate unjustly, or lead to absurd results, or be contrary to the evi-

dent meaning of the act taken as a whole, it should be rejected. (*Hawaii vs. Mankechi*, 190 U. S., 212.)

The difficulty is to select the rule governing the case. Once that is done, the case is decided. We are remitted to the words of the act. The Government contends that to print or publish in this connection is to print and distribute by newspapers, books, or pamphlets. Oral communication of information obtained from the published list is not forbidden. Thus the prosecution escapes from the dilemma proposed by the defendant, who would give to the word "publish" the same significance as "communicate" in order to inquire whether Congress could have intended to give to every person who might desire it exact information of the amount of taxes paid by his neighbors, and yet to punish him if he should discuss the interesting news.

17 To publish is to make public—to make known to people in general. In the statute, it does not cover the private communication by one person to another. It is not synonymous with "communicate" as it may be in the law of libel or slander. Other provisions of the law make this clear. Section 257 (a) forbids any shareholder, who has lawfully examined a corporation's return, to make known any particular thereof; section 3167 prohibits any officer or employee of the United States from divulging or making known to any person any particular of any income return; but the clause of section 3167, upon which the indictment is founded, makes it an offense for any person to print or publish any part of any income return. Evidently "to publish" has not here the same meaning as "to make known" or "to divulge."

The question remains whether the right of public inspection of a part of the return includes the right to print or publish. Public inspection is an inspection open to all the people. But one may acquire information and yet have no right to publish it, as in the case of privileged communications, or copyrighted documents, or, under certain circumstances, public records such as land records. (*Buck vs. Collins*, 51 Ga. 391; *Belt vs. Prince George's County Abstract Co.*, 73 Md. 289.) A distinction between inspection and publication exists. Doubtless Congress may determine (except insofar as it may be restrained by constitutional prohibition), in settling the policy of the law of taxation, how much or how little publicity of income returns shall be given. (*Flint vs. Stone Tracey Stone Co.*, 220 U. S. 107.) The prosecution contends that under the act of 1924, public inspection only is accorded, while printing or publishing is still a crime.

If the literal meaning of the words is adopted, this contention is sound, but will it stand the test of common sense? Is it in harmony with the general purpose of the statute? Congress took a long step toward general publicity of income tax returns in the act of 1924. Therefore, although public records, they were open to inspection

only upon presidential order, excepting only the cases of State officers and stockholders of corporations under certain conditions. In 1924 certain congressional committees were authorized to call on the Secretary of the Treasury and to secure "any data of any character contained in or shown by the returns, or any of them, that may be required," and "to inspect all or any of the returns at such times, and in such manner" as they may determine, and to submit any relevant or useful information thus obtained to the Senate or the House, as the case may be. Such provisions were calculated to lead to the publication by the press of information so obtained.

More important and significant was the amendment of section 257 (b) whereby public inspection was granted to every one so far as names and amounts were concerned. The privilege was not limited to those who had a personal or property interest to protect. It was accorded to all, without reason and without fee. Nor was it limited to those who might come to the office of the collector to satisfy a legitimate interest or an idle curiosity. In the discretion of the commissioner, the lists might be made available to public inspection "in such other places" as he might determine, conceivably in places so numerous and so public as to bring the information to the attention of a very large number of the people. What reason could the legislature have had to empower an official to advertise widely that which it would be a criminal offense for a citizen to distribute in pamphlet form?

The purpose of the amendments and additions to section 257 by the act of 1924 is plain. Congress determined to abandon the policy of secreting the amount of taxes paid from the general public. It was doubtless thought that thereby the chances of fraud, of favoritism, of improper concealment of income might be reduced. Every citizen informed as to the amount of taxes paid by his fellows would become a possible source of information to the Government. The taxpayers and the officials would be the more likely to do their full duties. No other explanation satisfactorily accounts for the changes

in the law. Bearing this in mind, one perceives that it is counter to the very spirit of the law to punish those who, by added publicity, materially assist to accomplish the very object which Congress had in view. To give consistency and clearness to the statute, it is necessary to hold that Congress had no intention to apply the penalties against printing and publishing to so much of the returns as should be given out on the commissioner's lists. As to other parts of the returns, the prohibition remains in effect.

The demurrer to the indictment will be sustained.

SEC. 257. (a) Returns upon which the tax has been determined by the commissioner shall constitute public records; but they shall

be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President: Provided, That the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a special committee of the Senate or House, shall have the right to call on the Secretary of the Treasury for, and it shall be his duty to furnish, any data of any character contained in or shown by the returns or any of them, that may be required by the committee; and any such committee shall have the right, acting directly as a committee, or by and through such examiners or agents as it may designate or appoint, to inspect all or any of the returns at such times and in such manner as it may determine; and any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate, or the House, or to both the Senate and the House, as the case may be: Provided, further, that the proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe: Provided, further, That all bona fide shareholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries. Any shareholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both.

21 (b) The commissioner shall as soon as practicable in each year cause to be prepared, and made available to public inspection in such manner as he may determine, in the office of the collector in each internal revenue district and in such other places as he may determine, lists containing the name and the post-office address of each person making an income tax return in such district, together with the amount of the income tax paid by such person.

SEC. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner what-

ever not provided by law any income return or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States, he shall be dismissed from office or discharged from employment.

[Title omitted.]

22

In United States District Court

Order sustaining demurrer filed 2nd January, 1925

The demurrer and supplemental demurrer to the indictment in the above-entitled case and each count thereof coming on for a hearing in open court and argument of counsel on both sides having been heard and considered and due deliberation having been had it is on this 2nd day of January, nineteen hundred and twenty-five, ordered by the District Court of the United States for the District of Maryland, that the said demurrer and supplemental demurrer be and the same are hereby sustained as to the indictment in the above entitled case and each count thereof.

MORRIS A. SOPER,
United States District Judge.

23

In United States District Court

Judge's certificate filed January 2, 1925

Certificate by the court that the decision sustaining a demurrer and supplemental demurrer to the indictment in the above-entitled case was based upon the construction of the statute upon which the said indictment was founded.

It is hereby certified by the District Court of the United States for the District of Maryland that the decision sustaining the demurrer and supplemental demurrer to the indictment and each count thereof in the above-entitled case was based upon the construction of section 3167 of the Revised Statutes of the United States as re-enacted by section 1018 of the act approved June 2, 1924, known as "An act to reduce and equalize taxation to provide revenue and for other purposes," which is the statute upon which the indictment and each count thereof in the above-entitled case is founded, and further that in sustaining the demurrer and supplemental demurrer to the said indictment the decision was directly based upon the construction of the statute above referred to in connection with the construction of section 257, subsection "B" of the act of Congress approved June 2, 1924, herein above referred to.

MORRIS A. SOPER,
United States District Judge.

January 2nd, 1925.

24 In the United States District Court

[Title omitted.]

*Petition for and order allowing writ of error filed January 2, 1925**To the Honorable Morris A. Soper, District Judge:*

The petition of the United States of America in the above-entitled cause prays that it may be allowed a writ of error to the Supreme Court of the United States from the decision sustaining the demurrer and supplemental demurrer to the indictment and each count thereof in the above-entitled case the said order or decision sustaining the same being entered on the 2nd day of January, nineteen hundred and twenty-five; that a writ of error and citation may be issued and served upon the Baltimore Post, a corporation organized under the laws of the State of Maryland, or its attorney of record; that the record of the proceedings in said case be transmitted to the Supreme Court of the United States and that the said decision sustaining the demurrer and supplemental demurrer be reversed and that the said demurrer and supplemental demurrer be overruled and that upon the service of a citation said writ of error may operate as a supersedeas until the final disposition of the cause by the Supreme Court of the United States.

25 And in support of this petition your petitioner herewith presents its assignment of errors.

A. W. W. WOODCOCK,
United States Attorney.

The prayer of the foregoing petition is hereby granted this 2nd day of January, nineteen hundred and twenty-five, and a writ of error is ordered to issue as prayed, the same to act as a supersedeas until the final disposition of this cause by the Supreme Court of the United States.

MORRIS A. SOPER,
United States District Judge.

26 [Title omitted.]

In United States District Court

Assignment of errors filed January 2nd, 1925

Now comes the United States of America, by A. W. W. Woodcock, United States attorney, and files the following assignment of errors upon which it will rely upon the prosecution of the writ of error allowed in the above-entitled cause, entered by this honorable court on the 2nd day of January, nineteen hundred and twenty-five:

1. The District Court erred in sustaining the demurrer and the supplemental demurrer to the indictment and each count thereof in

the above-entitled case in deciding that the matters and facts set out in the said indictment and each count thereof were not in violation of section 3167 of the Revised Statutes as embodied in section 1018 of the act of Congress approved June 2, 1924, known as "An act to reduce and equalize taxation to provide revenue and for other purposes."

2. The District Court erred in sustaining the demurrer and supplemental demurrer to the indictment and each count thereof, in that the said District Court decided that the printing and publishing by the defendant of the name and address of certain persons making income tax returns in the district of Maryland, together with the amount of the income tax paid by such persons was not a violation of section 3167 of the Revised Statutes of the United States which was reenacted by the act approved June 2, 1924, known as "An act to reduce and equalize taxation to provide revenue and for other purposes."

3. The District Court erred in sustaining the demurrer and supplemental demurrer to the indictment and each count thereof in that the said District Court in so doing decided that the provisions of section 257, subsection "B" of the act of Congress approved June 2, 1924, known as "An act to reduce and equalize taxation to provide revenue and for other purposes," made provisions by law for the printing and publishing by the defendant of the name and address of each person making an income tax return in the district of Maryland, together with the amount of the income tax paid by such person, the said District Court further deciding that the said subsection "B" hereinabove referred to removed and excepted from the provisions of section 3167 of the Revised Statutes of the United States which was reenacted by the act approved June 2, 1924, known as "An act to reduce and equalize taxation to provide revenue and for other purposes," the acts complained of in the said indictment and each count thereof.

4. The District Court erred in sustaining the demurrer and supplemental demurrer to the indictment and each count thereof in that the said District Court in so holding decided that the provisions of section 3167 of the Revised Statutes of the United States which was reenacted by the act approved June 2, 1924, known as "An act to reduce and equalize taxation to provide revenue and for other purposes," providing in part as follows: "It shall be unlawful for any person to print or publish in any manner whatever not provided by law any income tax return or any part thereof," do not apply to the printing and publishing by the defendant of the name and address of persons making income tax returns in the State of Maryland, together with the amount of the income tax paid by such person.

A. W. WOODCOCK,
United States Attorney.

In United States District Court

Writ of error

UNITED STATES OF AMERICA, ss:

The President of the United States, to the Honorable the Judges of the District Court of the United States for the District of Maryland, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the United States of America and the Baltimore Post, a corporation organized under the laws of the State of Maryland, a manifest error hath happened, to the great damage of the said the United States of America as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable WILLIAM H. TAFT, Chief Justice of the United States, the second day of January, in the year of our Lord one thousand nine hundred and twenty-five.

[SEAL.]

ARTHUR L. SPAMER,
*Clerk District Court of the United States
for the District of Maryland.*

Allowed by

MORRIS A. SOPER,

U. S. District Judge for the District of Maryland.

30 UNITED STATES OF AMERICA, ss:

To the Baltimore Post, a corporation organized under the laws of the State of Maryland, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States for the District of Maryland, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be cor-

rected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Morris A. Soper, United States District Judge for the District of Maryland, this 2nd day of January, in the year of our Lord one thousand nine hundred and twenty-five.

[SEAL.]

MORRIS A. SOPER,

U. S. District Judge for the District of Maryland.

Attest:

ARTHUR L. SPAMER,

Clerk, District Court of the United States for the District of Maryland.

Service of the within citation acknowledged this 12 day of January, 1925.

HAMAN, COOK, CHESNUT & MARKELL,
Attorneys for Balto. Post.

31 In United States Distict Court

[Title omitted.]

Stipulation re transcript of record filed Jan. 3, 1925.

It is stipulated and agreed by and between the counsel for the respective parties in the above-entitled case that the transcript of record upon the writ of error of the United States of America to the Supreme Court of the United States shall consist of the following, viz:

1. Indictment.
2. Order of appearance for defendant.
3. Defendant's demurrer to indictment.
4. Defendant's supplemental demurrer to indictment.
5. Order sustaining demurrer and supplemental demurrer.
6. Opinion of the court.
7. Certificate by the court that the question determined by the court in passing upon the demurrer and supplemental demurrer to the indictment involved the construction of the statute upon which the indictment was founded.
- 32 8. Petition for writ of error and order allowing the writ.
9. Assignment of errors.
10. Writ of error.
11. Citation.
12. Stipulation of counsel as to making up of transcript of record.

A. W. W. WOODCOCK,

United States Attorney for the District of Maryland.

NEWTON D. BAKER,

W. CALVIN CHESNUT,

Attorneys for the Defendant.

In United States District Court

Return to writ of error

In pursuance of the writ of error aforesaid, and according to the statute in such case made and provided, and of the order of court here, a record of the judgment aforesaid, with all things thereunto relating, together with the said writ of error annexed, is hereby transmitted to the said Supreme Court of the United States, accordingly.

Teste:

ARTHUR L. SPAMER,
Clerk.

In United States District Court

Clerk's certificate

UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Arthur L. Spamer, clerk of the District Court of the United States for the District of Maryland, do hereby certify that the foregoing is a true transcript of the record and proceedings of the said District Court, together with all things thereunto relating in the therein entitled cause, made up in accordance with stipulation of counsel for the respective parties filed in said cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said District Court, this 15th day of January, 1925.

[SEAL]

ARTHUR L. SPAMER,
Clerk.

[Indorsement on cover:] File No. 30,812, Maryland, D. C. U. S. Term No. 847. The United States of America, plaintiff in error, vs. The Baltimore Post. Filed January 17th, 1925. File No. 30,812

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